IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 273 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DEVIBEN GOVINDBHAI SOLANKI - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR AS SUPEHIA for Petitioner(s) : 1,
MR.L.B.DABHI, ASST. GOVERNMENT PLEADER for Respondent(s) : 1 - 2.
RULE SERVED for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 21/09/2005

ORAL JUDGMENT

The petitioner herein was working as a nurse with respondent No.3 from 2/2/1972 to 31/7/1996, when she opted for voluntary retirement. The petitioner thereafter went abroad.

2. On 18th April, 1998, Government passed a resolution granting benefit of pension to certain categories of employees which includes the case of the petitioner. The said scheme was made applicable from 1/1/1996. As per the resolution, the option was required to be exercised within three months from date of publication of the said resolution and accordingly, 23/7/1998 was the last date for the exercise of the option by the petitioner, even, as per the case of the respondent. The petitioner however, exercised her option on 11/1/2000. The petitioner is therefore, denied benefit of pension scheme on the ground of her having not exercised the option within stipulated time.

3. The case of the petitioner is that she was abroad and she never knew about the scheme, that she has exercised her option no sooner she learnt about the scheme. That having not been accepted, she has preferred this petition seeking following reliefs.

> a) Directing the respondents to fix and pay pensionary benefits to the petitioner as envisaged in the Resolution dt. 18.4.98, with 12% interest,from 31.7.96 of the accepting option.

b) During the pendency and final disposal of the petition the respondent no.1 may be directed to pay pension to the petitioner hence forth.

c) To grant such other and further relief as may be deemed fit.

4. Learned Advocate Mr.Supheia submitted that petitioner was never informed about the pension scheme envisaged under the resolution on 18th April, 1998, nor did she come to know about the same. The scheme was introduced after the petitioner voluntarily retired from service and she had no source to know the introduction of the scheme. Mr.Supheia submitted that it was obligatory on part of the respondent to inform the petitioner about the same in time and no communication having been made to the petitioner, the petitioner ought not to have been denied the benefit of the scheme. Mr.Supheia has relied on decision in case of ***S.D.M.Basha Vs. Deputy Inspector General of Police reported in 1993 (1) G.L.R. 877*** to support his submission that such administrative directions or decisions should be communicated to the employees concerned.

5. Learned A.G.P.,Mr.L.B.Dabhi has opposed this

petition. According to him, the petitioner has not exercised the option within time, prescribed under the scheme, and therefore, she cannot; now claim the benefit of the scheme.

6. This Court has taken into consideration rival side contentions. There appears not any dispute on eligibility of the petitioner to the pension scheme, provided she had exercised the option within time. Be that as it may, the denial of the benefit of the scheme is on ground of non-exercise of the option within time.

7. Now, therefore, arises the question, whether the delay in exercising the option can be said to be valid ground for denial of the benefits of pension scheme to the petitioner.

8. There is no dispute that the option is exercised beyond the time limit fixed in the resolution. The resolution came to be passed after about 20 months from the date of the petitioner voluntarily retiring from service. It is her case and not disputed by the other side that she had gone abroad. Obviously, she could not have known the introduction of the scheme. Her case cannot be put at par with an employee in service, who

would know about the scheme by virtue of being in office. In such situation, a pragmatic approach has to be adopted, if the employee is otherwise found to be eligible. In the case of S.D.M. Basha (Supra), a Co-ordinate Bench of this Court observed, ***"The question however, is whether it was made known to the person for whom it was issued. This is a resolution, i.e., administrative instructions and ordinarily, by some sort of publication it is required to be made known to the persons who are sought to be affected thereby."***

8.1 This Court by order dated 2/11/2004 directed that the respondent in the affidavit shall clarify as to the manner in which the Government Resolution was published and whether wide publicity was given to the resolution or not ? It would be appropriate to note that in the affidavit in reply filed on behalf of respondent No.3, no clarification in this regard is made. Legitimate inference therefore, would be that the Government Resolution was published only on the gazette. Wide publicity does not seem to have been given. There is no reason to disbelieve the say of the petitioner about she being unaware about the introduction of the scheme. It is not in dispute that petitioner had gone abroad after taking voluntary retirement. There is no material to

show that scheme was given wide publicity to infer knowledge on part of the petitioner. It would be unfair to expect the petitioner to exercise option within time and still more unfair to deny the benefit of scheme on this ground. This would be going against the very object of the resolution or the scheme viz. to give benefit of pension to eligible employees. Such technical stand cannot be approved in set of circumstances shown hereinabove.

9. In the set of above circumstances, this Court is of the view that the claim of the petitioner for benefit of the pension scheme deserves acceptance.

10. The petition is therefore allowed. The respondent authority shall consider the case of the petitioner as if the option was exercised within the time limit and process the case for pensionary benefits expeditiously, preferably within 6 (six) months from today. Rule made absolute. No costs.

11. It is clarified that since this Court does not express any opinion on entitlement or disentitlement of the petitioner to pension on other criterian, question of awarding interest does not survive.

(A.L.DAVE, J.)

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